

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

REGINALD MCFADDEN,

Plaintiff,

-against-

9:03-CV-931
(LEK/DRH)

JOHN MITCHELL, RN, NA-CCF; MICHAEL GORDON,
RN ICN-DOCS; KANG M. LEE; LYNN KHAN; DANIEL
A. SENKOWSKI, Superintendent; JAMES WOODS; PAUL
ANNETTE; RICHARD ROY; J. DOUGLAS, Sgt.; SGT.
LAREAU; ANTHONY ANNUCCI; CHRISTINA OSHIER,
Clerk, II; DEBORAH JARVIS, IRC; IRA ELLEN; ROBERT
COX; JOHN NELSON DECKER, ENT-AMC-ACF; IRWIN
LIEB, Urologist; GLENN S. GOORD; SHARON LILLY;
ROBERT SNIDER; DAVID ARMITAGE, Lt.-CCF; B.
DARNOBID, RPA-DCF; P. FRANKLIN, ICN-DCF; DAVID
O'CONNELL; BRIAN F. MALONE; THOMAS EGAN; D.
LUCIA, Sgt.-CCF,

Defendants.

MEMORANDUM, DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on May 6, 2005 by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 (2005) of the Northern District of New York. Dkt. No. 73.¹ After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff Reginald McFadden, which were filed on May 16, 2005. Dkt. No. 74.

¹ The May 6, 2005 Report-Recommendation was amended by an order dated June 3, 2005, which vacated the Court's denial of the defendants' motion for a stay of discovery. Dkt. No. 77.

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” Id. This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED that the Report-Recommendation is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED that Defendants’ motions for summary judgment on the sole issue of service of process (Dkt. Nos. 63, 65) is **DENIED**; and it is further

ORDERED that Plaintiff’s cross-motion for summary judgment on the sole issue of service of process (Dkt. No. 66) is **GRANTED**; and it is further

ORDERED that Plaintiff’s amended complaint is **DISMISSED** without prejudice as to all non-moving defendants;² and it is further

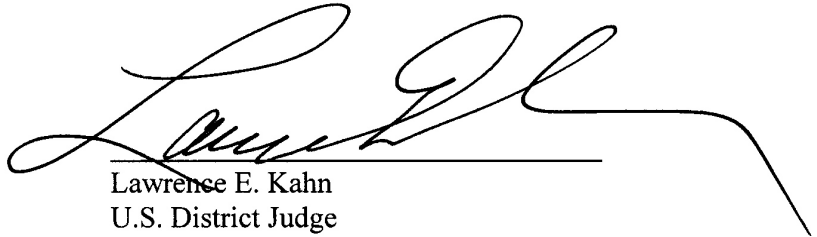
ORDERED that Plaintiff’s motion to strike Defendant Lieb’s amended answer (Dkt. No. 34) is **DENIED**; and it is further

ORDERED that the Clerk serve a copy of this order on all parties by regular mail.

² This Court is also in receipt of a letter request from Plaintiff dated June 30, 2005 (Dkt. No. 80) in which Plaintiff requests an extension of time to effect service upon the un-served defendants and an order directing defendants’ counsel to provide the current locations of these un-served defendants as part of their initial discovery. By adopting Magistrate Judge Homer’s Report-Recommendation and dismissing Plaintiff’s complaint as to the non-moving defendants, Plaintiff’s letter request is rendered moot and is therefore denied.

IT IS SO ORDERED.

DATED: July 11, 2005
Albany, New York



Lawrence E. Kahn
U.S. District Judge